IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

WRIT PETITION NO.4331 OF 2005

Shri Kantilal Shivlal Munot ... Petitioner

versus

Mrs Shardabai Ashok Baride ... Respondent

Mr.A.M.Kulkarni, Advocate for Petitioner

Ms.Parasnis,Advocate h/f Mr.G.S.Godbole for Respt.

CORAM : J.N.PATEL,J

DATED : 25th July, 2006

ORAL ORDER :

1. Ms.Parasnis holding for Mr.G.S.Godbole states that they have filed an appearance but, their name is not shown on the board.

2. Heard.

3. The petition can be disposed of at the stage of admission itself. The application of the petitioner (Original plaintiff) for seeking a fresh warrant against the Medical Officer came to be rejected by the trial Court on the ground that the petitioner does not appear to be keen to serve the Medical Officer and examine him and the respondent being a lady who is working as a labourer has to attend the Court at the cost of losing her wages and therefore the whole exercise undertaken by the plaintiff is with an object to delay the proceedings.

4. In the opinion of this Court, it was not proper on the part of the trial Court to have rejected the application by inferring that the petitioner is delaying the proceedings. The trial Court ought to have appreciated that the witness for whom the petitioner has sought warrant to procure his presence in Court is a Medical Officer and a public servant working in the Primary Health Centre who cannot be available to the petitioner and the only choice with which the petitioner is left is to seek his presence in Court through the process of the Court. Therefore, the impugned order is quashed

and set aside. The learned trial Court is directed to take necessary steps to procure the attendance of the witness sought for by the petitioner/plaintiff and expeditously dispose of the application for restoration.

5. Petition stands disposed of accordingly with no order as to costs.

(J.N.Patel, J)